

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Wells Fargo Bank,

Plaintiff,

v.

Atall Sherzad, et al.,

Defendants.

No. 2:22-cv-00820-KJM-CKD

AMENDED ORDER

Defendants Atall Sherzad and Mizhgan Alam, who appear pro se, removed this unlawful detainer action from the Superior Court of San Joaquin County. *See* Not. Removal, ECF No. 1. The court has reviewed the complaint and notice of removal and has determined on its own motion that it lacks subject matter jurisdiction. This action is thus **remanded** to the state court.

When a case “of which the district courts of the United States have original jurisdiction” is initially brought in state court, a defendant may remove it to federal court. 28 U.S.C. § 1441(a). There are two primary bases for federal subject matter jurisdiction: federal question jurisdiction under 28 U.S.C. § 1331, and diversity jurisdiction under 28 U.S.C. § 1332.

First, under § 1331, district courts have federal question jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Under the longstanding well-pleaded complaint rule, a suit “arises under” federal law “only when the plaintiff’s statement of his own cause of action shows that it is based upon [federal law].”

1 *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). Federal question jurisdiction
2 cannot rest upon an actual or anticipated defense or counterclaim. *Vaden v. Discover Bank*,
3 556 U.S. 49, 60 (2009).

4 Second, under § 1332, district courts have diversity-of-citizenship jurisdiction where the
5 amount in controversy exceeds \$75,000 and the parties are completely diverse. 28 U.S.C. § 1332.
6 “Where it is not facially evident from the complaint that more than \$75,000 is in controversy, the
7 removing party must prove, by a preponderance of the evidence, that the amount in controversy
8 meets the jurisdictional threshold.” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,
9 1090 (9th Cir. 2003) (per curiam).

10 Here, plaintiff Bank of America alleges defendants are living unlawfully in a residential
11 property plaintiff owns. *See* Compl. ¶ 2, ECF No. 1 at 12–13. Plaintiff asserts one state law
12 claim for unlawful detainer and no federal claims. *See generally id.* The parties are not diverse,
13 and no allegations in the complaint suggest the amount in controversy is greater than
14 \$75,000. *See id.* at 1 (stating that “demand is less than \$10,000). The court therefore lacks
15 subject matter jurisdiction.

16 Defendants argue that this court has jurisdiction over the matter under both § 1331 and
17 under § 1441 “because it is a civil action arising under federal law and in which a federal statute
18 is drawn into controversy.” Not. Removal at 2. However, there are no federal claims or laws at
19 issue and even if defendants asserted a defense based on federal law, which they do not, a
20 defendant cannot create a federal question by asserting such a defense. *See Vaden*, 556 U.S. at
21 60.

22 A federal district court may remand a case on its own motion where a defendant has not
23 established federal jurisdiction. *See* 28 U.S.C. § 1447(c); *Enrich v. Touche Ross & Co.*, 846 F.2d
24 1190, 1195 (9th Cir. 1988) (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).
25 This action is thus **remanded** to the Superior Court of San Joaquin County.

26 IT IS SO ORDERED.

27 DATED: May 20, 2022.

28 
CHIEF UNITED STATES DISTRICT JUDGE